

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017- 381-A

IN RE:

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| THE IMPACT OF THE TAX CUTS |) | ORS REPLY TO MOTIONS |
| AND JOBS ACT ON SOUTH |) | FOR RECONSIDERATION |
| CAROLINA UTILITIES |) | AND MOTON FOR CLARIFICATION |
| |) | |

Introduction

The South Carolina Office of Regulatory Staff (“ORS”) respectfully submits this Reply and Motion for Clarification requesting, first, that the Public Service Commission of South Carolina (“Commission”) deny the requests of Kiawah Island Utility (“Kiawah”), Daufuskie Island Utility Company (“DIUC”), Palmetto Utilities, Inc. (“Palmetto”) and Palmetto Wastewater Reclamation, LLC (“PWR”)(“Movants”) for reconsideration or rehearing of Order No. 2017-308 on the basis that the Commission’s Order is retroactive ratemaking and/or will somehow deprive the affected utilities of the ability to earn their approved operating margins or return on equity. Secondly, ORS does concur, in general, with Kiawah’s claim that Order No. 2017-308 fails to fully define the “effect” with the general statement of certain and therefore requests further clarification from the Commission. As stated in its previous filings with the Commission, ORS prays that the Commission preserve the benefits of the Tax Cuts and Jobs Act (“Act”) for customers of investor-owned utility companies under the Commission’s jurisdiction (“Utilities”) and that the Commission set a timetable for affected utilities to report to the Commission the amount of these benefits as well as a procedure for passing them to ratepayers.

Background and Positions of Regulated Utilities

1. The Act, signed into law on December 22, 2018, decreased the federal corporate income tax rate from 35% to 21% and had an effective date of January 1, 2018.

2. Corporate income taxes are recovered by Utilities from ratepayers and booked as an expense.¹ Utilities are entitled to an opportunity to earn a fair and reasonable return on investments in, or fair value of, the used and useful property which it necessarily devotes to rendering the regulated services.²

3. On December 28, 2017, the Office of Regulatory Staff (“ORS”) filed a Petition (“Petition”) requesting the impacts of the Act be examined and that the Commission order “the rates in effect on January 1, 2018 be subject to refund such that the ratepayers receive the benefit of the tax changes due to the Act.” In its Petition, ORS requested the Commission require all Utilities report the impact of the Act on the Utility’s operations. The Petition requested that each Utility file an estimate of its determination of the Act’s effects on the most recent test year information available, including an explanation of these effects. Additionally, pursuant to the Petition, each utility should propose procedures for changing rates to reflect these impacts.³

4. In Commission Order No. 2018-26, dated January 10, 2018, which did not provide a decision on the effective date of the Act for purposes of accruing benefit to ratepayers, the Commission directed Utilities to file comments and report the impact of the Act no later than January 24, 2018.⁴

5. Duke Energy Carolinas, LLC, (“Duke”) Duke Energy Progress, LLC, and Piedmont Natural Gas Company, in their comments dated January 24, 2018, stated that the difference between the customer revenues actually billed and what would have been billed taking into account the reduced corporate tax rate beginning January 1, 2018, would be deferred as a regulatory liability until the Commission determines the timing and nature of returning such benefits to retail customers. Their comments clearly indicate that they intend for the benefits of the Act to accrue to customers with an effective date of January 1, 2018.

6. ORS recognized in its Petition filed on December 28th that Palmetto Utilities, Incorporated (“PUI”), Carolina Water Service, Inc. (“CWS”), Synergy Utilities, L.P. (“Synergy”), and Moore Sewer, Inc. (“Moore”) either had at that time, or currently have rate cases pending before the Commission. ORS recommended that the effects of the Act be addressed as a part of those

¹ See *Ratemaking in the U.S.*, by Mark T. Bryant, Ph.D., <https://pubs.naruc.org/pub.cfm?id=53768A01-2354-D714-517A-DC3B4EC72920>

² See *S. Bell Tel. & Tel. Co. v. Pub. Serv. Com.*, 270 S.C. 590, 600, 244 S.E.2d 278, 283 (1978)

³ S.C. Code Ann. § 58-27-870(F) provides a mechanism for implementing rate changes that does not require a hearing.

⁴ Notably, no utility raised the issue of retroactive rate making.

proceedings. However, in the Commission Orders issued in the PUI and CWS cases in 2018, the Commission has only required that the utilities comply with the provisions in Order No. 2018-308 to “track and defer the effects resulting from the Tax Act in a regulatory liability account.”⁵ In the PUI, rate case, the Commission stated that the benefits of the Act should be determined in the current docket.⁶

7. The ORS filing in December 2017, served on all affected utilities by the Commission, effectively put all regulated South Carolina utilities on notice that ORS intended to seek an Order from the Commission to provide the benefits of the Act accrued by utilities be passed to ratepayers. Further, on January 10, 2018 the Commission by Order No. 2018-26 set a two-week deadline for these utilities to comment to the Commission on the timing and content of reports due to the Commission regarding the impacts of the Act.

8. On March 7, 2018, ORS submitted specific recommendations to the Commission in this docket regarding the actions of regulated utilities as a result of the additional expense savings by them under the lower corporate federal income tax rate established in the Act.⁷ These recommendations were based on a review of the actions taken by other state commissions, comments provided by the Utilities, and a desire to accrue the tax benefits to ratepayers in a manner that is efficient and reasonable. ORS’s recommendations were based in part on the understanding that no utility was then contesting that benefits of the lower corporate tax rate were to accrue to ratepayers effective January 1, 2018. ORS restated this position in a further filing in this docket made with the Commission on March 30, 2018.

9. On April 6, 2018 ORS filed a Motion with the Commission in this docket specifically requesting that the Commission act to preserve the benefits of the Act for South Carolina ratepayers effective January 1, 2018. ORS specifically requested that the Commission require Utilities contesting ratepayers’ right to recover for the federal tax differential effective January 1, 2018, to submit within ten days of the Commission’s order revised tariffs reflecting the estimate savings subject to true-up at a date to be determined by this Commission in a subsequent order and inform the customers of the rate change and the amount of tax savings the utility will be

⁵ Commission Order No. 2018-308, p. 22.

⁶ See Commission Order No. 2018-155, p. 22.

⁷ Commission Order Nos. 2018-75 and 2018-76 deferred action until the Commission received ORS’s recommendation.

returning to its ratepayers. ORS additionally filed a proposed Order which would have granted ORS' request.

10. On April 25, 2018 the Commission acted on ORS's Petition by issuing Order No. 2018-308 in which the Commission provided, in part, that "beginning January 1, 2018, regulatory accounting treatment is required for all regulated utilities for any impacts of the new law including current and deferred tax impacts." This Order failed to address or establish what treatment the utilities or ORS are to give to the tax benefits accrued by affected utilities between January 1, 2018 and April 25, 2018. The Order is additionally silent on whether utilities will even be required to provide the benefits of the tax reduction to their ratepayers at any time. The Order appears to be no more than a place-holder and has therefore left the affected utilities, their customers and ORS in the position of guessing as to the actual intent of the Commission Order. ORS does not oppose any specific methodology proposed by the various water and sewer utilities to flow back the savings under the Act to ratepayers but urges that the Commission act to Order these savings be provided to ratepayers as soon as possible for the reduction in the corporate taxes realized by the utilities since January 1, 2018.

WHEREFORE, ORS requests the Commission issue an Order

(1) Denying the afore cited Petitions for Reconsideration claiming that Commission Order No. 2018-308 is retroactive ratemaking by finding that the affected utilities had notice of the effective date of January 1, 2018 by the filing of the initial Petition in this docket by ORS on December 28, 2017 and by Commission Order No. 2018-26 issued on January 10, 2018. Further that as this change in the federal tax law was both unanticipated and non-recurring it is an extraordinary adjustment which is **not** retroactive ratemaking. *See, Porter v. S.C. Pub. Ser'y Comm.*, 493 S.E.2d 92 (S.C. 1997).

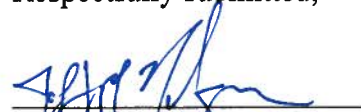
(2) Requiring all affected regulated utilities, as defined in Order No. 2018-308, to report to the Commission by June 30, 2018, the estimated savings, and when and how, the Utility proposes to return these tax savings to their ratepayers;

(3) Requiring that by not later than July 31, 2018 all affected utilities submit revised tariffs reflecting the estimate savings attributed to the tax benefits of the Act subject to true-up at a date to be determined by this Commission in a subsequent order and inform the customers of the rate change and the amount of the tax benefit retained by the utility;

(4) That in the alternative to the Commission granting ORS's request as stated above in paragraphs 2 and 3, that the Commission immediately schedule oral arguments to allow ORS and the other parties to this docket to present additional information to the Commission regarding their positions in this case; and

(5) Any other relief deemed appropriate by the Commission.

Respectfully submitted,



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